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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/743,507

12/22/2003

Robert J. Sweeny

279.238US2

9409

21186

7590

11/27/2007

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EXAMINER

MENDEZ, MANUEL A

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

11/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/743,507

Applicant(s)

SWEENY ET AL.

Examiner

Manuel Mendez

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

After a careful review of the last Office Action, the examiner finds applicant's arguments persuasive and hereby vacates the said Office Action which was dated June 8, 2007. Accordingly, the following rejection is not a Final Office Action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cohen**, U.S. Patent No. 5269301, in view of **Morris, Sr. et al.**, U.S. Patent No. 6,052,614.

The Cohen patent discloses an implantable medical device (heart sensor) capable of transmitting command information to an external drug delivery device (18) having a signal processing circuit (12) and circuitry for deriving command information from the heart sensor and circuitry for controlling delivery of a drug in accordance with the command information. Cohen does not specifically disclose encoded communications between heart sensor and the external drug delivery device. However, the use of encoded communications between implanted sensors and external infusion systems is conventional in the art as evidenced by the teachings of **Morris, Sr. et al.** In column 5, lines 19-30, the specification states that "[a]lthough this invention uses fiber optic cables between ECG electronics sensor module 60 and monitor 90, other methods

of communication can be utilized , including but not limited to, laser beams or infrared ultrasound, and RF (radio wave) at frequencies greater than approximately 400 MHZ to exit the MRI tunnel". Concerning claims 2-6, the specification also discloses in column 5, lines 24-30, that "other methods of encoding and decoding the information may be employed for information transmission and reception, including but not limited to, amplitude modulation...frequency modulation...frequency modulation of a pulse train and digital communications". Based on the above observations, for a person of ordinary skill in the art, modifying the apparatuses disclosed by Cohen with encoded wireless communications, as taught by Morris, Sr. et al., would have been considered obvious in view of the proven conventionality of (1) the wireless communication mode and (2) the various encoding methods.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cohen**, U.S. Patent No. 5269301, in view of **Morris, Sr. et al.**, U.S. Patent No. 6,052,614, and in further view of **Ouchi et al.**, U.S. Patent No. 5,741,214 or **Swanson et al.**, U.S. Patent No. 6,488,679.

The Cohen and Morris, Sr. et al. patents do not disclose an implantable sensor capable of measuring impedance having a first and second electrodes, and a power source. However, such sensors are conventional in the art as evidenced by the teachings of **Ouchi et al.**, U.S. Patent No. 5,741,214 or **Swanson et al.**, U.S. Patent No. 6,488,679. Both patents disclose sensors having a first electrode, a second electrode, and a power source. Accordingly, for a person of ordinary skill in the art, modifying the apparatus disclosed by Cohen with a sensor that measures impedance,

Application/Control Number:
10/743,507
Art Unit: 3763

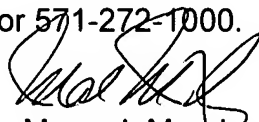
Page 4

as taught by Ouchi et al. or Swanson et al., would have been considered obvious in view of the proven conventionality of the sensing enhancement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel Mendez whose telephone number is 571-272-4962. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Nicholas D. Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Manuel Mendez
Primary Examiner
Art Unit 3763

MM